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United States Environmental Protection Agency, Region IX
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:)
)
William A. Munzer, Miles E. Munzer,)
Gerald S. Glassman for himself)
and on behalf of Plainville West,)
and Jeffrey Scoon)
Respondents.)
)
Proceeding Under Section 122(h)(1))
of the Comprehensive Environmental)
Response, Compensation and Liability)
Act of 1980 (42 U.S.C. §9622(h)(1)))
as amended by the Superfund)
Amendments and Reauthorization)
Act of 1986)
_____)

ADMINISTRATIVE CONSENT
ORDER

Docket No. 95-14

1 This Order is issued by the United States Environmental Protection Agency ("EPA")
2 and is agreed to by the Respondents captioned above. The purpose of this Order is for EPA
3 to recover response costs incurred by the United States at or in connection with the North
4 Indian Bend Wash Superfund Site -- Area 3 (the "Site"), located in Scottsdale, Arizona and to
5 resolve the liability of the Respondents for such response costs.

6 EPA is authorized to enter into this Order pursuant to the authority vested in the
7 Administrator of the EPA by Section 122(h)(1) of the Comprehensive Environmental
8 Response, Compensation, and Liability Act of 1980, as amended by the Superfund
9 Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("CERCLA"), which
10 authority has been delegated to the Regional Administrators of the EPA by EPA Delegation
11 No. 14-14-D (Sept. 13, 1987), and redelegated to the Director, Hazardous Waste
12 Management Division, EPA Region IX.

13 WHEREAS, EPA alleges that hazardous substances as defined by Section 101(14) of
14 CERCLA, 42 U.S.C. § 9601(14), are present at the Site and that such hazardous substances
15 have been or are threatened to be released into the environment from the Site;

16 WHEREAS, EPA alleges that the Site is a "facility" as defined in Section 101(9) of
17 CERCLA, 42 U.S.C. § 9601(9);

18 WHEREAS, EPA alleges that such releases or threatened releases required response
19 action to be undertaken at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604,
20 and will require further limited response action to be undertaken in the future;

21 WHEREAS, EPA acknowledges that, consistent with the Record of Decision ("ROD")
22 of September 1991, investigation of the soils has been completed and this investigation
23 reveals that soil vapor extraction (the remedy selected in the ROD) is not required at this
24 Site;

25 WHEREAS, EPA alleges that in performing response actions, it has incurred response
26 costs at or in connection with the Site totalling \$284,617 as of July 11, 1994;

27 WHEREAS, EPA alleges that as of April 30, 1994, it was entitled to interest in the
28 amount of \$29,710 on response costs incurred;

1 WHEREAS, EPA alleges that the Respondents are responsible parties pursuant to
2 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are liable for response costs incurred
3 at or in connection with the Site;

4 WHEREAS, EPA represents that the Attorney General or her designee has issued
5 prior written approval of the settlement embodied in this Order pursuant to Section 122(h)(1)
6 of CERCLA, 42 U.S.C. § 9622(h)(1); and

7 WHEREAS, EPA and the Respondents desire to settle certain claims arising from the
8 Respondents' alleged involvement with the Site without litigation and without the admission
9 by Respondents of any liability or adjudication of any issue of fact or law;

10 NOW, THEREFORE, in consideration of the promises herein, and intending to be
11 legally bound hereby, it is ordered and agreed as follows:

12 1. **DEFINITIONS:** Unless otherwise expressly provided herein, terms used in this
13 Consent Order which are defined in CERCLA or in regulations promulgated under CERCLA
14 shall have the meaning assigned to them in CERCLA or in such regulations. Whenever
15 terms listed below are used in this Consent Order the following definitions shall apply:

16 a. "CERCLA" shall mean the Comprehensive Environmental Response,
17 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

18 b. "Day" shall mean a calendar day. In computing any period of time under this
19 Consent Order where the last day would fall on a Saturday, Sunday, or Federal
20 Holiday, the period shall run until the close of business of the next working day.

21 c. "EPA" shall mean the United States Environmental Protection Agency and any
22 successor departments or agencies of the United States.

23 d. "Parties" shall mean the United States and each and every Respondent.

24 e. "Past Response Costs" shall mean all costs, including but not limited to direct and
25 indirect costs, that EPA, the U.S. Department of Justice or any agency or entity on
26 behalf of EPA has incurred in connection with the Site through July 11, 1994.

27 f. "Respondents" shall mean William A. Munzer, Miles E. Munzer, and Gerald S.
28 Glassman for himself and on behalf of Plainville West, Inc., and Jeffrey Scoon.

g. "Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA, the U.S. Department of Justice or any agency or entity on behalf of EPA has incurred or will incur in the future in connection with the Site.

h. "Section" shall mean a portion of this Consent Order identified by an arabic numeral and/or a lower case letter.

i. "Site" or "the NIBW Site -- Area 3" shall mean, for the purposes of this Administrative Consent Order, the Maricopa County Parcel Nos. 131-15-013B,C; 131-15-001N, and 131-15-012A property, roughly bounded by Hayden Road to the East, Pierce Street to the North, the Indian Bend Wash to the West and McKellips Road to the South and the areal extent of contamination.

j. "United States" shall mean the EPA and the U.S. Department of Justice (DOJ), and any other United States department, or agency or instrumentality acting on behalf of the EPA with respect to the Site.

2. This Order shall be binding upon EPA and shall be binding upon the Respondents and their successors and assigns. Each signatory to this Order represents that he or she is fully authorized to enter into the terms and conditions of this Order and to bind legally the party represented by him or her. The Respondents agree to undertake all actions required by this Order. The Respondents consent to the issuance of this Order and will not contest EPA's authority to enter into this Order or to implement or enforce its terms, subject to any defenses available to Respondents under this Order.

3. The Respondents agree to pay to the Hazardous Substance Superfund a total of \$160,000 in order to resolve certain claims arising from the Respondents' alleged involvement with the Site. The agreements and obligations under this Administrative Consent Order shall not be binding on or effective as to any party without the signature of all Respondents.

A. The Respondents, William A. Munzer, Miles E. Munzer, and Gerald S. Glassman for himself and on behalf of Plainville West, Inc., agree to pay to the Hazardous Substance Superfund \$150,000, according to the schedule set forth in Appendix A of

1 this Order, and agree to pay interest on all amounts outstanding after the date of the
2 First Payment set forth in Appendix A. Respondents Munzers and Glassman are
3 jointly and severally liable for the obligation set forth in this Section 3.A.

4 B. The Respondent Jeffrey Scoon agrees to pay to the Hazardous Substance Superfund
5 \$10,000, according to the schedule set forth in Appendix A of this Order, and agrees
6 to pay interest on all amounts outstanding after the date of the First Payment set forth
7 in Appendix A. Respondent Scoon is individually liable solely for the obligation set
8 forth in this Section 3.B.

9 C. Interest shall be calculated at the rate specified for interest on investments of the
10 Hazardous Substance Superfund established under subchapter A of Chapter 98 of Title
11 26 of the U.S. Code, in accordance with 42 U.S.C. § 9607(a). Upon request by
12 Respondent(s), EPA will provide a calculation of interest being charged, and the
13 interest rate being used for such calculation, for any time period covered by Appendix
14 A of this Order.

15 4. The Respondents' payments shall be made by certified or cashier's check made
16 payable to "EPA-Hazardous Substance Superfund." The checks shall reference the name and
17 address of the Respondents, the site name and identification number, and the EPA docket
18 number for this action and shall be sent by the Respondents to:

19 EPA Region IX
20 ATTN: Superfund Accounting
21 P.O. Box 360863M
Pittsburgh, PA 15251

22 5. The Respondents shall simultaneously send a copy of the checks to:

23 Emily Roth
24 Mail Code H-7-2
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

25 6. In addition to any other remedies or sanctions available to EPA, any Respondent
26 who fails or refuses to comply with any term or condition of this Order as it applies to that
27 Respondent shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA,
28 42 U.S.C. § 9622(h)(3), and to civil penalties pursuant to Sections 122(l) and 109 of

1 CERCLA, 42 U.S.C. §§ 9622(l) and 9609.

2 7. Subject to Section 8 of this Order, upon full payment of the amounts specified in
3 Section 3.A (Respondents Munzers and Glassman) and 3.B (Respondent Scoon) of this Order,
4 EPA agrees that the Respondents Munzers and Glassman, and Respondent Scoon,
5 respectively, shall have resolved any and all civil liability to EPA under Section 107(a) of
6 CERCLA, 42 U.S.C. section 9607(a), for reimbursement of EPA Response Costs.

7 8. Nothing in this Order is intended to be nor shall it be construed as a release,
8 covenant not to sue, or compromise of any claim or cause of action, administrative or
9 judicial, civil or criminal, past or future, in law or in equity, which EPA may have against
10 the Respondents for:

11 a) any liability as a result of failure to make the payments required by Section
12 3.A and Appendix A of this Order for Respondents Munzers and Glassman
13 and Section 3.B and Appendix A of this Order for Respondent Scoon, or other
14 failure to comply with terms of this Order; or

15 b) any liability not expressly included in Section 7 above, including, without
16 limitation any liability for i) injunctive relief at the Site; ii) response costs other
17 than those specifically described under Section 3 above; iii) damages for injury
18 to or loss or destruction of natural resources; or iv) criminal liability.

19 9. Nothing in this Order is intended to be nor shall it be construed as a release,
20 covenant not to sue, or compromise of any claim or cause of action, administrative or
21 judicial, civil or criminal, past or future, in law or in equity, which EPA or Respondents may
22 have against any person, firm, corporation or other entity not a signatory to this Order.

23 10. The Respondents agree not to assert any claims or causes of action against the
24 United States or the Hazardous Substance Superfund arising out of response activities
25 undertaken at, or relating in any way to, the Site, or to seek any other costs, damages, or
26 attorney's fees from the United States, its agencies, employees or contractors arising out of
27 response activities undertaken at, or relating in any way to, the Site. The Respondents waive
28 any right they might have to seek reimbursement from EPA pursuant to Section 106 of

1 CERCLA, 42 U.S.C. § 9606, for any costs pertaining to the Site.

2 11. With regard to claims for contribution against the Respondents for matters
3 addressed in this Order, the parties hereto agree that the Respondents are entitled, as of the
4 effective date of this Order, to such protection from contribution actions or claims as is
5 provided in Section 122(h)(4) of CERCLA.

6 12. This Order shall be subject to a thirty-day public comment period pursuant to
7 Section 122(i) of CERCLA. In accordance with Section 122(i)(3) of CERCLA, EPA may
8 withdraw its consent to this Order if comments received disclose facts or considerations
9 which indicate that this Order is inappropriate, improper or inadequate.

10 13. The effective date of this Order shall be the date upon which EPA issues written
11 notice to the Respondents that the public comment period pursuant to Section 12 of this Order
12 has closed and that comments received, if any, do not require EPA withdrawal from this
13 Order.

14 14. This Consent Order may be executed and delivered in any number of
15 counterparts, each of which when executed and delivered shall be deemed to be an original,
16 but such counterparts shall together constitute one and the same document.

17
18 IT IS SO AGREED:

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20 
21 William A. Munzer Date 11/30/94

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23 Miles E. Munzer Date 11/30/94

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2 Gerald S. Glassman Date 11/22/94
3 Gerald S. Glassman for
4 himself and on behalf of
5 Plainville West, Inc.

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Jeffrey Scoon Date

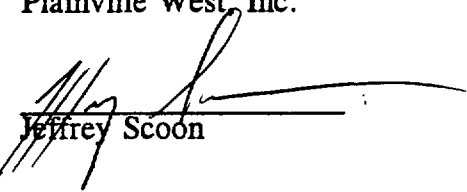
The above being agreed and consented to, IT IS SO ORDERED
this 31st day of January, 1995.

U.S. Environmental Protection Agency

By: David B. Zelikson
Jeff Zelikson, Director
Hazardous Waste Management Division
Region IX

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3 Gerald S. Glassman for
4 himself and on behalf of
5 Plainville West, Inc.

Date

6 
Jeffrey Scoon

Date

10/31/97

7 The above being agreed and consented to, IT IS SO ORDERED
8 this 31st day of January, 1995.

9 U.S. Environmental Protection Agency

10 By:



11 Jeff Zelikson, Director
12 Hazardous Waste Management Division
13 Region IX
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APPENDIX A
PAYMENT SCHEDULE

Respondents, William and Miles Munzer and Gerald Glassman, for himself and on behalf of Plainville West, Inc., shall either: a) pay the sum of \$150,000.00 within thirty (30) days of the Effective Date of this Order, or b) comply with the following schedule:

	<u>AMOUNT</u>	<u>DATE DUE</u>
FIRST PAYMENT:	\$37,500.00	Within 30 Days of the Effective Date of this Order
SECOND PAYMENT:	\$37,500.00 *	The First Anniversary of the Effective Date of this Order
THIRD PAYMENT:	\$37,500.00 *	The Second Anniversary of the Effective Date of this Order
FINAL PAYMENT:	\$37,500.00 *	The Third Anniversary of the Effective Date of this Order

Respondent Jeffrey Scoon shall comply with the following schedule:

FIRST PAYMENT:	\$1,000.00	Within 30 Days of the Effective Date of this Order
SECOND PAYMENT:	\$4,500.00 *	July 1, 1995
THIRD PAYMENT:	\$4,500.00 *	December 31, 1995

* Plus interest as set forth in Section 3(c) of this Order